

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

DARRYL LAMONT GALLOWAY,

Petitioner,

No. 2:18-cv-00732-CL

v.

ORDER

**MARK NOOTH, Superintendent,
Snake River Correctional Institution,**

Respondent.

AIKEN, District Judge.

Magistrate Judge Mark D. Clarke has filed a Findings and Recommendation (“F&R”) recommending that the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 be denied. ECF No. 38. Under the Federal Magistrates Act, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate judge’s findings and recommendations, “the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate judge’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress,

in enacting [the Act], intended to require a district judge to review a magistrate's report to which no objections are filed."). Although no review is required in the absence of objections, the Magistrates Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Id.* at 154. The Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that "[w]hen no timely objection is filed," the court should review the recommendation for "clear error on the face of the record."

In this case, Judge Clarke recommends that Grounds One through Nine and Ground Eleven of the Petition for Writ of Habeas Corpus be denied. Judge Clarke recommended that consideration of Ground 10, which concerned non-unanimous jury verdicts, be stayed pending a decision by the United States Supreme Court. On June 16, 2021, the parties submitted a joint status report in which Petitioner withdrew Ground Ten of his petition and requested that the stay be lifted. ECF No. 50. On June 17, 2021, Judge Clarke lifted the stay and referred the case to this Court for review. ECF No. 51. Petitioner subsequently filed his Objections, ECF No. 53, and Respondent has filed a Response, ECF No. 54. The Court has considered Judge Clarke's Findings and Recommendation, as well as Petitioner's Objections. The Court finds no error.

The F&R is therefore ADOPTED and the Petition for Writ of Habeas Corpus, ECF No. 2, is DENIED and this case is DISMISSED with prejudice. The Court declines to issue a certificate of appealability because Petitioner has not made a

substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

It is so ORDERED and DATED this 20th day of September 2021.

/s/Ann Aiken

ANN AIKEN

United States District Judge